International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 27 (Daniel Construction Company) *and* Paul Jones. Case 14–CB–5436

April 6, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 14, 1982, Administrative Law Judge Irwin H. Socoloff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 27, St. Louis, Missouri, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Expunge from its files any reference to the layoff of Paul Jones on July 8, 1981, and notify him in writing that this has been done and that evidence of this unlawful layoff shall not be used as a basis for future personnel actions against him."

2. Substitute the following for paragraph 2(d):

"(d) Sign and mail sufficient copies of said notice to the Regional Director for Region 14, for posting by Daniel Construction Company, Callaway, Missouri, if willing, at all places where notices to its employees are customarily posted and ask the Employer to remove any reference to Jones' unlawful discharge from the Employer's files and notify Jones that it has asked the Employer to do this."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT direct employees to reject promotion to foreman positions because they are not members of the Union; warn employees that if they accept foreman positions they will not receive future job referrals; threaten employees with physical harm to themselves and their families if they accept foreman jobs; prevent employees from becoming foremen or threaten to cause their discharge if they refuse to gather evidence against supervisors of their employer.

WE WILL NOT attempt to cause, or cause, the layoff of employees because they are not members of the Union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL notify Daniel Construction Company, in writing, that we have no objection to the employment or promotion of Paul Jones.

WE WILL make Paul Jones whole for any loss of earnings he may have suffered because we prevented him from becoming a foreman, and, thereafter, caused his layoff, plus interest.

WE WILL expunge from our files any reference to the layoff of Paul Jones on July 8, 1981, and notify him in writing that this has been done and that evidence of this unlawful layoff will not used as a basis for future personnel action against him, and WE WILL ask

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In *Sterling Sugars, Inc.*, 261 NLRB 472 (1982), we determined that an expunction remedy was necessary in all cases of unlawful discipline. Although that case involved the unlawful discharge of an employee by his employer, the need for an expunction remedy is no less compelling where, as here, a union causes an employee to be laid off or discharged. Accordingly, where a respondent union has control over hiring hall records or the potential to adversely affect the employment of those individuals seeking referral, we shall require that the respondent union expunge from its files any reference to the unlawful discharge and notify the affected individual that it has done so.

Moreover, we shall require that Respondent Union not only mail copies of the notice to the Employer for posting, if the Employer is willing, but we shall also order that Respondent Union ask the Employer to remove any reference to the unlawful discharge from the Employer's own files and Respondent Union shall notify Charging Party Jones that it has done so. We shall, therefore, in the instant case, modify the Administrative Law Judge's recommended Order to so provide.

the Employer to remove any reference to Jones' unlawful discharge from the Employer's files and notify Jones that it has asked the Employer to do this.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS LOCAL NO. 27

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon charges filed on July 14 and August 27, 1981, by Paul Jones, an individual, against International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 27, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint[1] dated August 28, 1981, alleging violations by Respondent of Section 8(b)(2) and (1)(A) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denies the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me in St. Louis, Missouri, on December 14 and 15, 1981, at which the General Counsel and Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the the Genenal Counsel filed a brief which has been duly considered.

Upon the entire record in this case, and from my observations of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Daniel Construction Company, a Missouri corporation, is engaged as a general contractor in the building and construction industry. Presently, it serves as general contractor at a nuclear power plant construction site in Callaway, Missouri, herein called the Callaway jobsite. During the year preceding issuance of the complaint, a representative period, Daniel, in the course and conduct of its business operations, purchased and received at the Callaway jobsite goods and materials valued in excess of $50,000 which were sent directly from points located outside the State of Missouri. I find that Daniel Construction Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] This case was, initially, consolidated with Case 14-CB-5473. However, at the hearing, I approved an agreement among the parties in settlement of the latter case. Accordingly, I ordered that Case 14-CB-5473 be severed from the instant proceeding.

II. LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES[2]

A. *Background*

As general contractor at the Callaway jobsite, Daniel vests overall supervision of its operations in a project manager, Harold Starr. Reporting to Starr is the construction manager, Gerald Stephens, who, *inter alia*, decides upon matters concerning employee layoffs, including the number of workers to be laid off. Some 65 or 70 craft superintendents, who direct the field work, report to Stephens and, when a layoff is contemplated, determine the identity of the employees to be laid off, subject to the final approval of Stephens. According to the testimony of Daniel's personnel manager, Mitchell Rugg, the craft superintendents, in selecting employees for layoff, consider work performance and attendance, but not seniority.

During all periods relevant to the instant case, Mark Vislay has been the craft superintendent over the boilermaker mechanics and welders employed at the Callaway site. At times, Vislay has shared his responsibilities, first, until May 1981, with William Campbell, and, thereafter, with John Snapp. Until May 18, 1981, Respondent also employed a boilermaker general foreman, Raymond Parker, who reported to Campbell. Subject to the approval of the craft superintendant, Parker, upon instruction, selected boilermaker mechanics for layoff. In doing so, he considered the recommendations of the foremen who worked under him, as well as the suggestions of Respondent Union's shop steward for employees working within the classification, Joseph DeScheda. During those periods when the position of general foreman was vacant, the foremen and the shop steward delivered their recommendations concerning layoff selection directly to Craft Superintendant Vislay.

The Union is the recognized collective-bargaining representative of the boilermaker mechanic and welder employees working at the project. Under the project agreement between the parties, within these classifications, the "General Foreman, foremen and all other hourly employees required by the Employer shall be referred to the Employer by the Union." Pursuant to this provision, the construction manager has utilized the Union as the exclusive source of referral of boilermaker mechanics and welders employed on the project.

Paul Jones, a boilermaker mechanic, was referred to the project by Respondent Union in January 1979. As

[2] The factfindings contained herein are based on a composite of documentary and credited testimonial evidence introduced at the hearing. In general, I have credited the testimony of Paul Jones who impressed me as honest and forthright in his narration of events. On the other hand, based on demeanor impressions, and in light of prior statements inconsistent with his testimony, I have not credited the testimony of Respondent's steward, Joseph DeScheda. I have also accorded little weight to certain uncorroborated testimony of Daniel's former general foreman, Raymond Parker, due to his conceded inability to recollect events material to the disposition of this case. Where necessary to do so, additional credibility resolutions have been set forth, *infra*.

Jones was not a member of Respondent, he paid a monthly service fee to the Union and, consequently, was regarded as a "permit man." According to Jones' credited testimony, in October or November 1980, he was approached by steward DeScheda[3] and another union steward. They asked Jones to contribute to the reelection campaign of Respondent's business agent, Casson. When Jones asked what amounts were being contributed by the other employees, he was told that the donations varied between $100 and $500. However, the stewards advised Jones that they expected a $1,500 contribution from him as Casson had kept him, Jones, on the job for 2 years and because they believed that Jones' wife was wealthy. Jones was further informed that such a contribution would help him to get a union membership card. Jones refused to donate such an amount. Sometime thereafter, DeScheda again asked Jones for a campaigncontribution and the employee agreed to think about it. About 2 weeks later, when DeScheda solicited a contribution, Jones tendered a check in the amount of $500. DeScheda refused to accept it and demanded cash. After further discussion, Jones stated that he would not contribute at all. DeScheda replied that that was up to Jones, but that "If you don't give, you just hurt yourself in the long run because permit people that don't give to this campaign won't have a job for very long."

B. *The Alleged 8(b)(1)(A) Violations*

Jones credibly testified that, in late March 1981, Campbell told him that he, Campbell, had decided to set up a temporary foreman position and thought that Jones was a good man for the job. When Jones stated that he feared that there would be repercussions if, contrary to union policy, a permit man was designated as foreman, Campbell assured the employee that, under the contract, Daniel had the right to name its own foremen. Shortly thereafter, Jones informed Parker of the conversation with Campbell. Parker stated that he already knew about it and had, in fact, recommended Jones for the position. On the next day, Parker told Jones that Respondent Union's steward, DeScheda, after learning of Jones' designation as foreman, had stated that a permit man would not be named foreman; the foreman would be "a Local 27 man or nobody."

Shortly thereafter, DeScheda met with Jones, telling the employee that he would try to talk him out of taking the job. Jones said that he wanted the job. DeScheda told him that he could not have the position and that he, Jones, was to "Go in there and tell Bill Campbell that you don't want the job." When Jones insisted that he did want the position, DeScheda replied that the Union, and not Daniel, was running the project and there would not be any permit men made foremen. DeScheda added that "if you take this job with this scab outfit . . . you'll never work for the hall again." Jones stated that that did not make any difference. DeScheda replied, saying, "you go ahead . . . you take this job and . . . [the Union] will come down on you so damn hard you won't know what happened . . . they'll blow you and your family away . . . we got people to go to Cuba any time . . . you're not working with a bunch of punks."

DeScheda and Jones then met with Campbell and Parker. Campbell asked what had occurred and DeScheda stated that Jones did not want the job. Jones said that he did want the position but that DeScheda had stated that he, Jones, could not take it because he was a permit man. Jones turned to DeScheda and asked him to repeat what he had said before "about blowing my family away." DeScheda said that there were men working at the project who had union cards and that Jones did not want the position. An argument ensued and, as Jones left, he heard DeScheda suggest that employee Bair be given the position. Thereafter, Parker designated Bair as the temporary foreman.

Based on Jones' testimony, I find that Respondent Union, through its agent, Joseph DeScheda, violated Section 8(b)(1)(A) of the Act by directing Jones to reject the temporary foreman position, offered to him by Daniel, because the employee was not a member of Respondent; warning Jones that, if he took the position, he would not receive future job referrals; threatening the employee with physical harm to himself and his family if he accepted the foreman position; and preventing Jones from becoming a foreman.

In April 1981, Jones credibly testified, DeScheda approached him and said that the Union was "really happy because you turned the foreman's job down." The steward added, "Now you've got a chance of getting a union card if you just kind of go along with us. You're going to have to do us a favor, just a little favor we'd like to get straightened out here and we'd like you to do it for us." DeScheda explained that the Union wanted Jones to record conversations of Campbell and Parker which would be used in an effort to have them fired. Jones said that he would not get involved.

A few days later, DeScheda again asked Jones to carry a small concealed tape recorder. Jones refused. DeScheda responded, stating that the only way Jones would be able to keep his job "was to go along," otherwise, he, Jones, "would be down the road" with Campbell and Parker. Several weeks thereafter, DeScheda introduced this subject for the third time and Jones again refused to wear or carry a concealed recorder. DeScheda stated, "you'll either wear it and go along or you'll go down the road." The steward told Jones that assenting to the Union's request was the only way that he would be able to keep his job. DeScheda added, "I've got the power down at the hall, that if you go along with this . . . you'll be working a long time . . . a good chance you'll get a union card out of it." Jones, again, declined.

Based on Jones' testimony, I find that Respondent, through its agent, DeScheda, violated Section 8(b)(1)(A) of the Act by threatening to cause Jones' discharge if he refused to gather evidence against Daniel supervisors.

C. *The Alleged 8(b)(2) Violation*

The first layoff of boilermaker mechanics, during the year 1981, occurred on May 12, when 10 workers in that

[3] At the hearing, Respondent admitted that, at all times material herein, DeScheda acted as its agent within the meaning of Sec. 2(13) of the Act.

classification were laid off. Prior thereto, a list of employees to be laid off was prepared by Parker who testified that, in making his selections, he considered work performance and attendance, but not seniority. Before compiling the list, according to his testimony, Parker sought the recommendations of steward DeScheda. DeScheda asked that Jones and employee McKinnon be laid off. Nonetheless, Parker's list did not include the names of those two employees, and they were not laid off. So far as revealed by the credible record evidence, Respondent Union did not, thereafter, withdraw its request that Jones and McKinnon be laid off.

On May 18, Parker terminated his employment, leaving vacant the position of general foreman. On May 19, DeScheda informed the unit employees that he was running the job. In June 1981, Mark Vaucher became a boilermaker foreman. At that time, he was told by Respondent's business agent, Casson, that the Union would negotiate with Daniel for the purpose of obtaining for Vaucher appointment to the position of general foreman.

Following the May 12 layoff, the next layoff of boilermakers occurred on July 8, 1981, when two employees were laid off, Jones and McKinnon. Vaucher testified that he recommended Jones for layoff. It is undisputed that, before submitting his layoff recommendations, Vaucher consulted DeScheda.[4]

At the time of the July 8 layoff, Jones had worked at the jobsite, for Daniel, for 2-1/2 years; McKinnon for 1 year. Some 15 boilermaker mechanics, who were not laid off, had worked at the site for less than 5 months; 4 individuals, for less than 4 weeks. Included in this latter group were college students, planning to leave the jobsite and return to school at the end of the summer, and workers described by their foreman, Vaucher, as "not good workers" who "did stupid things" and "took it too easy." Nonetheless, Vaucher testified, he chose to retain those workers, and lay off Jones, because he, Vaucher, once spotted Jones and his partner, Stoops, a college student and temporary worker, laying down in a water box while checking condenser tubes for leaks. At the time, Jones explained to Vaucher that he, Jones, and Stoops were waiting for pressure in the tubes to build up so as to show the location of the leaks. On another occasion, Vaucher found Jones, for several minutes, out of his work area.

In my view, the General Counsel has established, by a preponderance of the credible record evidence, that Respondent Union attempted to cause, and caused, the lay of Jones for reasons other than the failure of the employee to tender dues and initiation fees uniformly required, in violation of Section 8(b)(2) of the Act. In reaching this conclusion, I rely on DeScheda's repeated threats to cause Jones' discharge; the established role which Daniel permitted DeScheda to play in layoff decisions; Respondent Union's unwithdrawn request of May 1981 that Jones be laid off; and the inadequately explained selection of Jones for layoff, upon the heels of Daniel's attempt to promote that employee to foreman, at a time when more junior, temporary employees, whose work had been judged by their foreman to be inadequate, were available for layoff. In these circumstances, the inference is warranted that Jones was selected for layoff not because of the matters noted by Vaucher, who chose to retain Stoops, Jones' partner, despite the commission of the same offenses by that employee, but, rather, because selection of Jones for layoff was in compliance with the expressed desires of Respondent Union.

[4] Both Vaucher and DeScheda testified that DeScheda unsuccessfully sought to persuade Vaucher to delete Jones' name from the list, an assertion I do not credit. Vaucher appeared to me to be a biased witness. For the reasons noted at fn. 2, I have not relied on the testimony of DeScheda.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Daniel Construction Company, described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(b)(2) and (1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Daniel Construction Company is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 27 is a labor organization within the meaning of Section 2(5) of the Act.

3. By directing an employee to reject a promotion to foreman, offered to him by Daniel, because the employee was not a member of Respondent; warning the employee that if he took the foreman job he would not receive future job referrals; threatening the employee with physical harm to himself and his family if he accepted the foreman position; and preventing the employee from becoming a foreman and threatening to cause his discharge if he refused to gather evidence against Daniel supervisors, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(b)(1)(A) of the Act.

4. By attempting to cause, and causing, the layoff of Paul Jones, because he was not a member of Respondent, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(b)(2) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[5]

The Respondent, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local No. 27, St. Louis, Missouri, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Directing employees to reject promotion to foreman positions because they are not members of Respondent; warning employees that if they accept foreman positions they will not receive future job referrals; threatening employees with physical harm to themselves and their families if they accept foreman jobs; preventing employees from becoming foremen and threatening to cause their discharge if they refuse to gather evidence against supervisors of their employer.

(b) Attempting to cause, and causing, the layoff of employees because they are not members of Respondent.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify Daniel Construction Company and Paul Jones, in writing, that it has no objection to the employment or promotion of Jones by Daniel Construction Company.

(b) Make PauL Jones whole for any loss of earnings he may have suffered because Respondent prevented him from becoming a temporary foreman and, thereafter, caused his layoff, by payment to him of a sum of money equal to that which he would have earned as wages, from the dates of discrimination to the date he is reinstated by Daniel Construction Company to his former or substantially equivalent position (or, in the event he is not so reinstated, to the date he obtains substantially equivalent employment), less net earnings during such period, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *FLorida Steel Corp.*, 231 NLRB 651 (1977) (see, generally, *Isis Plumbing*, 138 NLRB 716 (1962)).

(c) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and mail sufficient copies of said notice, to the Regional Director for Region 14, for posting by Daniel Construction Company, Callaway, Missouri, if willing, at all places where notices to its employees are customarily posted.

(e) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[5] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."